HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not a approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1059 of 2001
(Old No. 1596 of 1981)

Guddi and another ……. Appellants

Versus

State …….. Respondent.

Approved for reporting.

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Not approved for reporting.

Date of Decision 18th December, 2004.

Initial of Judge.

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Court No.2
Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1059 of 2001
(Old No.1596 of 1981).

(1) Guddi S/o Rati Ram,
(2) Ratan Singh S/o Sunu,
(3) Hans Ram S/o Mohan Singh,
(4) Tika Ram S/o Ratan Singh,
(5) Lakhi Ram S/o Ratan Singh,
(6) Libu S/o Magno,
(7) Gulab Singh S/o Rati Ram,
(8) Tula Ram S/o Libu
(9) Balli S/o Kasia,
(10)Parma S/o Sher Singh,
(11)Sher Singh S/o Sri Ram alias Rati Ram,
All residents of Village-Serithi Khat Uprali, Athgaon, Police Station & Tehsil-Chakrata, District Dehradun.

..... Appellants

Versus

State ..... Respondent.

Mrs.Pusha Joshi, learned counsel for the appellants.
Sri U.P.S.Negi, learned Addl. Advocate General assisted by Sri G.S.Sandhu, learned A.G.A. for the respondent.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble B.C. Kandpal, J.)

This criminal appeal arises out against the judgment and order dated 17.7.1981 passed by Additional Sessions Judge, Dehradun in Sessions Trial No. 38 of 1980, **State versus Ratan Singh and 18 others,** convicting and sentencing the appellant Guddi to life imprisonment under Session 302 of the Indian Penal Code; appellants Ratan Singh and Hans Ram were also convicted and each of them sentenced to life

imprisonment under Sec. 302 read with Sec. 34 I.P.C.; appellants Tika Ram, Lakhi Ram and Libu were convicted and each of them sentenced to one year's rigorous imprisonment under Sec. 324 read with Sec. 34 I.P.C.; appellants Gulab Singh and Tula Ram were convicted and each of them sentenced to one year's rigorous imprisonment and appellants Balli, Parma and Sher Singh were convicted and each of them were sentenced to one year's rigorous imprisonment under Sec. 324 r/w Sec. 34 I.P.C. and two year's rigorous imprisonment and a fine of Rs. 250/- each and in default of payment of fine further rigorous imprisonment of three month's under Sec. 326 r/w Sec. 34 I.P.C.

2- At the out set it may be mentioned that out of the above named eleven appellants, five appellants have been died during the pendency of appeal. The appeal was dismissed as abated on behalf of appellants Ratan Singh, Libu, Tula Ram and Balli, vide this Court's order dated 01.7.2004 and on behalf of appellant Sher Singh the appeal was dismissed as abated, vide this Court's order dated 27.8.2004.

3- The prosecution case in brief is that on 04.10.1979, at about 5.00 P.M. Sher Singh gave a written report Ext.ka-1 to Sri Paras Ram, Patwari Circle Kailo I, Chakrata, District-Dehradun with the allegations that at about 9.10 A.M. the complainant alongwith Rati Ram, Tula Ram, Mohar Singh, Bir Singh, Hans Ram, Maya Ram and Tulsi of the same village had gone for cutting the grass from the common piece of land situated at Sodhi Dhar. That meanwhile accused persons, namely, Ratan Singh, Maya Ram, Tika Ram, Lakhi Ram Pat Ram, Libu, Gulab Singh, Hans Ram, Nag Chand, Kishnu, Sita Ram, Tula Ram, Parma, Sher Singh, Jagtu, Dhoom Singh, Shiv Ram, Vali and Guddi

armed with guns and *Lohe Band Lathis,* came with the intention to kill them when they were cutting the grass. At that time, Pat Ram, Nag Chand, Guddi has guns with them, Ratan Singh, Hans Ram, Nag Chand, Sher Singh, Parma and Siya Ram, Dhoom Singh and others had Lohe Band *Lathis and stones* with them. After coming to the spot, the accused persons, started beating the complainant and his companions who were cutting the grass. Accused Guddi fired with his gun at Tula Ram who died at the spot. Accused Ratan Singh and Hans Ram gave blows to Rati Ram on his head with Lohe Band Lathi due to which Rati Ram also died. Accused Nag Chand, Sher Singh, Parma, Siya Ram, Dhoom Sinmgh and others took Marpit with Bir Singh, Mohar Singh, Hans Ram, Maya Ram by means of Lathis and stones and caused injuries to them. That with great difficulty, the complainant and Tulsi managed to escape from the spot. That the aforesaid occurrence took place due to the old enmity amongst the residents of two villages, namely, Sidhi and Pokhri.

4- On the basis of this written report, F.I.R. Ext.Ka-43 was scribed by Patwari-Paras Ram on 04.10.1979, at 5.00 P.M. and the case was registered at crime No.10 of 1979 under Sec. 302 I.P.C. and under Sec. 25 Arms Act. He started investigation and went to the spot on 5.10.1979, prepared site plan of the place of occurrence Ext.Ka-11. The Investigating Officer also prepared Panchayatnama Ext.Ka-12 for deceased Tula Ram and Ext.Ka-13 for deceased Rati Ram. After completing the other formalities he sent the dead bodies of aforesaid Tula Ram and Rati Ram to Doon Hospital Dehradun for post mortem. The challans through which both the dead bodies were sent, were received in the Doon Hospital, Dehradun on 6.10.1979 at 5.30 P.M. by

Dr. A.K.Verma. On the same day the Investigating Officer recorded the statements of witnesses.

5- The same day i.e. 05.10.179 he arrested accused Shiv Ram, Jagtu, Gulab Singh and prepared Fard separately. The Investigating Officer also took blood stained earth, stones and some grass and ordinary earth from each of the nearby places of the dead bodies of Tula Ram and Rati Ram and prepared Fard separately.

6- On 7.10.1979 Dr. A.K.Verma (P.W.5) conducted the post mortem on the dead bodies of Tula Ram and Rati Ram.

7- At the time of post mortem on the dead body of Tula Ram, the Dr. A.K.Verma found the following ante mortem injuries:-

(1) Gunshot entry wound 2.2 cm. X 1 cm. communicating with exit wound, present 8 cm. infront of right ear. Margins are scorched and there is blackening in an area of 10 cm. X 4 cm. including the wound on right temporal region. Directed backwards and slightly upwards towards exit wound.

(2) Gunshot wound 2.5 cm. X 1 cm. communicating with entry wound; situated on the top of head and 11 cm. above and below the middle of right eyebrow. No scorching or tattooing.

(3) Lacerated wound 8 X 1 cm X scalp deep anterior posterior only 2 cm. below the injury No.2 and 15 cm. above the right ear.

(4) Lacerated wound 2.5 X 1.5 cm.X 0.5 cm. just below the right ear X pinna of right ear is also lacerated in an areas of 4 X 2 cm.

(5) Bleeding from right ear, clots present.

(6) Contusion with abrasion 3 X 2 cm. over the top of right shoulder.

(7) Contusion 10 X 4 cms. on the front of upper half of right arm.

(8) Contusion 6 X 4 cm. on left anterior superior iliac spine and on adjacent abdomen.

(9) Contusion 8 X 4 cm. on the middle of inner aspect of right thigh.

In the internal examination of the dead body the doctor found the clotted blood below the scalp on the head. Both parietal bones, right temporal bones and occipital and frontal bones were found fractured and all these wounds were below the injury Nos. 1 & 2. The membrane of the brain below injury Nos. 1 & 2 was also found ruptured and conjested. The brain was found almost liquefied and mixed with blood. He also found anterior cranial fossae on right side in the middle and in the back fractured.

8- At the time of post mortem on the dead body of Rati Ram, Dr. A.K.Verma found the following ante mortem injuries:-

(1) Lacerated wound 4 X 1 cm. X scalp deep 2 cm. above the right brow.

(2) Incised wound 2.5 cm. X 2 cm. X scalp deep obliquely 6 cm. above the middle of right eyebrow. Elliptical shape.

(3) Penetrating wound 3.5 X 1.5 cm X brain cavity deep cutting and fracturing the bone underneath in a triangular (roughly) area of 1.5 cm X 1 cm., wound situated antero posteriorly 9 cm. above the inner end of left eye brow. Margins of wound are clear cut.

(4) Abraded contusion 2 X 2 cm. just outer to left eye.

(5) Incised wound 3.5 X 1 cm X scalp deep with underlying bone fractured, situated obliquely 3 cm. above and behind the right ear. Elliptical.

(6) Incised wound 5 X 1.5 cm X (scalp and muscle deep) 1.5 cm., 4 cm. behind and slightly below the right ear horizontally placed.

(7) Lacerated wound 4 X 1 cm X skin deep on the inner aspect of left forearm just above the wrist.

(8) Contusion 8 X 9 cm. on the anterior lateral aspect of middle of right arm.

(9) Multiple contusions in an area of 26 X 15 cm. over the right scapula and back.

(10) Multiple contusions in an area of 20 X 12 cm. over the left scapula and below.

In the internal examination on the dead body of Rati Ram the doctor found clotted blood in the scalp below the injuries on the head. He also found both parietal bone, right temporal bone and occipital bone fractured at may places. He also found the brain membrane of the brain ruptured, brain in a liquefied state and mixed with blood. He also found the bones of anterior, right middle and his posterior cranial fossae fractured in many parts. He also found clotted blood in all the fossae. Pia mater and Archnoid mater membrane.

9- In the opinion of the doctor, the cause of death of both the deceased, namely, Tula Ram and Rati Ram was due to shock and haemorrhage due to above mentioned injuries.

10- Dr. K.K.Mehrotra (P.W.7) conducted the X-ray of injured Bir Singh and found his ulna bone fractured in the upper part.

11- Dr. S.K. Sharma (P.W.8) examined the injuries of accused Shiv Ram S/o Tolu on 6.10.1979 and found the following injuries:-

(1) Incised wound 5 cm. X 5 cm. X muscle deep on the top of scalp 12 cm. at the right pinna and 13 cm. above nape of neck.

(2) Abrasion 0.5 cm. X 0.5 cm. on exterior/posterior aspect of right arm. 4 cm. below elbow joint.

(3) Abrasion 0.5 cm. X 0.5 cm. on left skin in its middle third. 14 cm. below tibial tuberosity.

(4) Abrasion 0.5 cm. X 0.25 cm. on left skin in its lower third 5 cm. above ankle joint.

(5) Complaint of pain over right hip. No external injury.

12- Dr.R.K.Jaiswal (P.W.9) examined injured Hans Ram S/o Bhawan Singh on 5.10.1979 at 10.10 A.M. and found the following injuries on his person:-

(1) An incised wound on left parietal region of the scalp 7cm. X 0.5 cm. X skin deep. Edges are regular clean cut retracted spindle shaped. Scalp formed.

(2) An contused wound in an area of 4 cm. X 4 cm. on the right parietal region of the scalp the colour of brusie is violet at periphery.

Dr. Jaiswal (P.W.9) also examined injured Mohar Singh S/o Punna on the same at 10.10 A.M. and found the following injuries:-

(1) An incised wound 5 cm. X 0.5 cm. skin deep, 5.5 cm. from left orbital margin edges are regular clean cut spindle shaped scab formed, on the forehead.

(2) A lacerated wound in the left parietal region 12 cm. from exterior occipital protuberance 3 cm. X 0.5 cm. X. skin deep.

(3) A lacerated wound sin the left parietal region 4 cm. X 0.5 cm. X skin deep. 11 cm from tragus of the left ear.

(4) An contused wound in an area of 8 cm. X 4 cm. along the medial margin of left scapulas. 5 cm. from inferior angle of left scapula. Colour of the bruise changing from red to violet.

During the examination of injured Maya Ram S/o Parma at 10.30 A.M. on 5.10.1979, he (P.W.9) found the following injury on his person:-

An incised wound 6.5 cm. X 0.5 cm. skin deep on the left parietal region 17 cm. from exterior occipital protuberance. Edges regular, clean cut, spindle shaped scab formed.

Dr.Jaiswal (P.W.9) also examined the injuries of injured Bir Singh S/o Nain Singh at 11.00 A.M. and found the following injuries:-

(1) An incised wound 5 cm. X 0.5 cm. X skin deep edges regular clean cut scab formed spindle shaped 10 cm. from exterior occipital protuberance on the right parietal region of the scalp.

(2) An contused swelling in an area of 10 cm. below the left elbow joint having an punctured wound in a diameter of 0.5 cm. X 1 cm. deep. Haemorrhage present inside the wound. Wound is present 5 cm. from left elbow joint on its post aspect.

(3) An abrasion 5 cm. X 0.5 cm., 4 cm. from right wrist joint scab formed.

13- The investigating Officer after completing the investigation, submitted chargesheet Ext.Ka-44 against the aforesaid 19 accused persons under Sections 147, 148, 149, 302 and 326 of the Indian Penal Code and under Sec. 25/27 Arms Act. After the submission of the

charge sheet, the accused were committed to the Court of Sessions and learned Additional Sessions Judge on 23.8.1980 framed the charge under Sections 147, 148, 302 and 326 read with Sec. 149 of the I.P.C. and under Sec. 324 read with Section 149 I.P.C. against accused Guddi. A separate charge under Sections 147, 148, 302 read with Sec. 149, under Secs. 326 read with Sec. 149 and 324 read with Sec. 149 I.P.C. was framed against accused Ratan Singh and Hans Ram on the same day. A separate charge under Sections 147, 148, 302 read with Sec. 149 I.P.C., under Sec. 326 read with Sec. 149 I.P.C. and Sec. 324 read with Sec. 149 I.P.C. was framed against accused Maya Ram S/o Ratan Singh, Tika Ram, Lakhi Ram, Pat Ram, Libu, Gulab Singh, Nag Chand, Phisku, Siya Ram, Tula Ram, Parma, Sher Singh, Jagtu, Dhoom Singh, Shiv Singh and Bali on the same day also.

14- The prosecution in support of its case examined P.W.1 Sher Singh, who was witness of fact and occurrence. According to prosecution case, he was present at the time of alleged occurrence and was cutting grass at that time. P.W.2 Mohar Singh was also a witness of fact and injured. P.W.3 Karam Singh, resident of village-Punha. At the time of alleged occurrence, he was going to village-Barotha and on his way to village-Barotha he saw the alleged occurrence. P.W.4 Maya Ram was also a witness of fact and an injured person. P.W.5 Dr. A.K.Verma, who conducted the post mortem on the dead bodies of deceased Tula Ram and Rati Ram, P.W.6 Ram Singh, who scribed the written report Ext.Ka-4 on 4.10.1979 at about 6 or 7.00 P.M. on the dictation of accused Ratan Singh, P.W.7 Dr. K.K.Mehrotra, who conducted the X-ray of injured Bir Singh, P.W.8 Dr. S.K.Sharma, who examined the

injuries of accused Shiv Ram, P.W.9 Dr. R.K.Jaiswal, who medically examined the injured Hans Ram, Mohar Singh, Maya Ram and Bir Singh and P.W. 10 Paras Ram Patwari who investigated the case.

15- After the evidence of the prosecution was over, the statements of accused were recorded under Section 313 of the Criminal Procedure Code. They pleaded not guilty and said that they were implicated falsely in this case by Sri Paras Ram Patwari due to enmity. They also said that the said piece of grass land belongs to Sidhiwalas.

Accused Ratan Singh in his statement on 8.10.1979 stated that Paras Ram Patwari arrested him and by force and coercion, obtained his signatures on a blank paper which is Ext.Ka-4. At that time, Ram Singh (P.W.6) the Ex Patwari was also with him. He further said that he had moved an application in the Court of S.D.M. to file a complaint against Paras Ram and so he was implicated falsely by Paras Ram.

Accused Dhoom Singh said that he is teacher in Primary School and that on 4.10.1979 at the time of alleged occurrence, he was in the School.

Accused Shiv Ram said that he received the injuries due to the fall in the night.

16- The learned Additional Sessions Judge after having perused the entire evidence on record and haring the learned counsel for the parties convicted and sentenced the accused/appellants as above. Feeling aggrieved, the appellants have come up in this appeal.

17- We have heard learned counsel for the appellants as well as learned Addl. Government Advocate and perused the record.

18- Firstly, it has been argued by the learned counsel for the Appellant that the First Information

Report in the present case has not been lodged at the time as has been alleged by the prosecution. Our attention has been invited towards the overwriting in the crime number and it has been submitted that originally it was crime No.9 of 1979. It was subsequently changed into crime No.10 of 1979 and this overwriting shows that the First Information Report is ante-timed.

19- We do not find any substance in this argument. Patwari, Paras Ram, P.W. 10 has deposed in his cross-examination before the court by giving an explanation that he prepared the Chic Report on 04.10.1979 at 5:00 P.M. in triplicate. He has also deposed that when he started from the Police Station, it was not in his knowledge as to what crime number was to be endorsed on the Chik Report because of numbers of Kshetras (Circles) in the area. Hence, on presumption he put crime No.9 of 1979, which was subsequently corrected as crime No.10 of 1979. In case, if the First Information Report would have been given later on, then certainly there should have been no overwriting or any mistake in endorsing the crime number. Therefore, under these circumstances, it cannot be said that First Information Report is ante-timed. In case, if the crime number would have been written as 9 of 1979 in place of crime No.10 of 1979, then certainly the First Information Report would have been ante-timed. But the conduct of the Investigating Officer shows that he infact did not try to make the First Information Report ante-timed.

20- The evidence reveals that the copy of the First Information Report was sent to Chief Judicial Magistrate, Dehradun on 05.10.1979 and it reached to the Court on 06.10.1979. Therefore, this circumstance also shows that the First Information Report to the

occurrence was immediately sent to the Magistrate concerned. Exhibit Ka.47 is the crime No.19 of 1979 which shows that before sending the accused to the court concerned for remand, the case was already registered. Therefore, under no stretch of circumstance, the First Information Report in this case can be said to be ante-timed.

21- The learned counsel for the appellant has further argued that the First Information Report has been lodged with undue delay and this delay has not been satisfactorily explained by the prosecution. It has been submitted that the incident is alleged to have taken place at 9:10 A.M. while the First Information Report was lodged at 5:00 P.M. with Patwari Circle.

22- We again do not find any force in this argument. P.W. 1, Sher Singh is the informant of the alleged occurrence and he has deposed that immediately after the occurrence, he ran-away from the spot towards the village and on the way to the village, Kedar Singh and Karan Singh R/o Village Punha met him. He told these two persons that the Sodhiwala people have picked-up a quarrel and committed Marpeet. Therefore, the informant reached to his village Pokhri and narrated the occurrence to his father Nain Singh, Chet Ram and two other persons. This witness has further deposed that meanwhile Kedar Singh and Karan Singh also reached in the village and informed that Tula Ram and Rati Ram have died and other persons sustained injuries. The informant has further stated that he was sent to Chakrata for lodging the First Information Report and he reached Chakrata at 3 to 3:30 P.M., but none was available in the court's at Chakrata, therefore he went to scribe Mohar Singh and narrated the facts who wrote the written report exhibit

ka-1 on his dictation. Thereafter, he went to Patwari with the written report and handed over the same to him. The distance of the Patwari Circle from the place of occurrence as has been mentioned in the Chik Report is about 42 Kms., therefore the explanation of the informant with regard to the delay in lodging the First Information Report appears to be justified and satisfactorily and we do not find anything on the record which may suggest that the First Information Report has been lodged with undue delay and after due deliberations in order to concocted the false case against the accused/appellants.

23- The learned counsel for the appellant has further argued that motive which has been suggested by the prosecution in the instant case appears to be quite weak and it reveals from the record that both the parties have admitted enmity which is a double edged weapon. Hence, under these circumstances, the complainant side also had an opportunity to falsely implicate the accuse/appellant.

24- In view of the aforesaid submission advanced by the learned counsel for the appellant, we have to consider the entire evidence with great care and caution.

25- P.W. 1, Sher Singh is the informant and he is also an eyewitness of the actual occurrence. He has deposed before the court that at the time of he alleged occurrence, he alongwith Mohar Singh, Beer Singh, Hans Ram, Maya Ram, Tulsi, Rati Ram and Tula Ram were cutting grass from the peace of land situated at Sodidhar and while they were cutting grass, the accused/appellant appears over there out of which accused/appellant Guddi, Patram and Nagchand had guns with them and rest of the sixteen other assailants were armed with “Lohband Lathis and stones”. The

accused persons after reaching at the spot asked the complainant side as to why they were cutting the grass and started hurling abuses. When the complainant side resisted to it, then they started beating them at once. This witness has further stated that this Marpeet took place for about ten minutes and in this Marpeet, two persons had died and four persons from the side of the complainant sustained injuries on their persons.

26- Likewise, P.S. 2, Mohar Singh is also an eyewitness as well as has sustained injuries during the course of the occurrence. He has corroborated the testimony of P.W. 1 and has also deposed clearly the motive of the accused/appellant for committing the crime. The prosecution has also produced P.W. 4 Maya Ram who is also an eyewitness and has sustained injuries during the course of the occurrence. This witness has deposed that he and other persons from the complainant side were cutting grass and the accused/appellant appeared over there and objected to it. When the complainant and this witness said to the accused that the peace of the land belong to them and they are entitled to cut the grass from there, then the accused/appellant at once started beating them and in this Marpeet two persons died and four persons from the side of the complainants sustained injuries. Therefore, the motive suggested by the prosecution for commission of this crime is quite clear and we are of the definite view that the accused/appellant had a motive to commit the crime at the time of the occurrence.

27- Now, in order to assess the evidence with regard to this particular aspect of the matter as to whether the prosecution has successfully established the guilt of the accused/appellant beyond reasonable doubt or not, we have to again scrutinize the occular

evidence produced by the prosecution in order to ascertain the factum of the occurrence as well as the role attributed to the accused/appellant in the commission of crime.

28- We advert again to the oral evidence and it reveals from the perusal of the deposition of P.W.1, Sher Singh that he was with the complainant party at the time of the occurrence. This witness was also cutting the grass alongwith the deceased and the other injured persons from the side of the complainant. This witness has given a categorical statement pertaining to the factum of occurrence. This witness has stated clearly that accused Ratan Singh (since deceased) and Hans Ram, appellant assaulted deceased Rati Ram by means of “Lohaband Lathis” while accused/appellant Guddi fired with the gun at Tola Ram. He has further deposed that rest of the accused persons assaulted to Hans Ram, Maya Ram, Mohar Singh and Beer Singh due to which they sustained injuries. He has also deposed that he and Tulsi were at some distance and they threw stones towards the accused persons while the accused person also threw stones towards the witnesses and their complainants.

29- P.W.2, Mohar Singh is an injured witness and he has sustained as many as four injuries out of which one is incised wound, two are lacerated wounds and one is contusion. This witness has deposed that at the time of the alleged occurrence, he, Tola Ram, Sher Singh, Hans Ram, Beer Singh, Tulsi and Maya Ram were cutting grass from the piece of land of Sodidhar. He has further advised that accused persons armed with gun, Lohbandh lathis came at the spot and asked the complainant side as to why they were cutting grass from that piece of land. The complainant side replied

that the land belongs to them; hence they would cut the grass from that piece of land. After hearing this, the accused persons started beating them with Lohbandh Lathis. This witness has categorically deposed that he was beaten by accused Tika Ram, Lakhi Ram and Libu. He has also deposed that Rati Ram was assaulted by accused Ratan Singh, (since deceased) and Hans Ram, appellant. He has further deposed that Maya Ram was assaulted by the accused Gulab Singh and Tulsi, while Beer Singh was assaulted by accused Balli and Parma. This witness has further deposed that accused Guddi, appellant fired at Tula Ram. He has already deposed that accused persons also threw stones due to which he and his companions sustained injuries. He has also deposed that in this occurrence, Rati Ram and Tula Ram he died at the spot.

30- The prosecution in order to support its case has also produced P.W.4, Maya Ram who is also an injured witness. This witness has sustained one incised wound on the Parietal reason. He has also corroborated the version of another injured witness P.W.2, Mohar Singh on each count.

31- The prosecution has further produced P.W. 3, Karan Singh as an eyewitness and this witness has stated that he is a resident of village Punha and at the time of the alleged occurrence, he was going to village Barotha for making some purchases. He has also stated that for going to village Barotha, he has to cross Pokhri, Sodidhar and Sidhi. This witness has also deposed that on the way, he met Kedar Singh who also accompanied him for Barotha and when they covered a distance of about 2-3 furlongs from village Pokhri, they heard some noise and gunshots. They saw that the accused Ratan Singh and Hans were beating Rati Ram and

Rati Ram was lying on the ground. This witness has further deposed that he and Kedar Singh saw the alleged occurrence as well as Sher Singh and Tulsi also told them that Guddi and others have killed their two persons and are beating other persons at which he and Kedar Singh went towards the spot and after reaching at the spot, they saw two dead bodies. Therefore, they returned back to village Pokhri and informed Daulat Singh, Gyan Singh and others about the occurrence and asked them to carry the injured persons to the hospital. Nothing material has come out during his cross-examination, which could discard his testimony about his being an eyewitness of the occurrence. The presence of this witness at the time and the place of the occurrence appears to be quite natural.

32- Therefore, from the statement of the eyewitnesses, it is established beyond reasonable doubt that on 04.10.1979 at about 9:10 A.M., alleged occurrence took place at Sodidhar in which two persons died and four persons sustained injuries on their person. The injured witnesses as well as eyewitness produced by the prosecution have categorically deposed before the Court as to in what manner the incident has taken place. They have also attributed the specific role to each of the accused/appellants.

33- The occular version produced by the prosecution finds support from the perusal of the exhibit Ka-4 which is a written report by Ratan Singh accused (since deceased) against Sher Singh and thirty-three other persons of village Pokhri. In this written report, (exhibit ka.-4), Ratan Singh has mentioned that on 04.10.1979 at about 9:00 A.M. on the alleged peace of land Sher Singh and thirty three other persons armed with Lathis came while the villages of Sidhi were

cutting grass and attacked them by means of Lathis. It has also been mentioned that the villages of Sidhi also threw stones in their defence. Exhibit Ka-4 further reveals that Sher Singh, Mohan Singh, Tola Ram attacked with Lathis on Shiv Ram R/o village Sidhi, who sustained injuries on his person. Shiv Ram is an accused in the present case and he sustained four injuries on his person which was medically examined by Dr. S.K. Sharma, P.W.8 on 06.10.1979 at 10:00 A.M. at Chakrata after his arrest on 05.10.1979.

34- It is further important to mention the deposition of P.W.6, Ram Singh in this regard. As P.W.6, Ram Singh is the scribe of Ka-4, who has stated before the Court that he is working as *Arayaj Navi* (Petition Writer) at Chakrata after his retirement from the post of Patwari and on 04.10.1979 at about 6-7 P.M., accused Ratan Singh came to him and dictated this report exhibit ka-4. He has further deposed that he prepared the carbon copy of this report, which has been brought by him to the court. He has also deposed that Ratan Singh used to come to him as he has also written a number of applications on his dictation before this application. A suggestion has been put to this witness that he has written this report on the dictation of Paras Ram, Patwari and while it was written by him, the signature of Ratan Singh were obtained by force by the Patwari.

35- The statement of accused Ratan Singh under Section 313 Cr.P.C. shows that he was arrested on 08.10.1979 by Paras Ram, Patwari who obtained his signatures on exhibit ka-4 when it was blank. It is pertinent to mention here that the carbon copy was with Ram Singh, which also bears the signature of Ratan Singh and no explanation coming forth that if the

signature of accused Ratan Singh were obtained on blank paper, then how carbon copy bears the signature at the same place as in exhibit ka-4. Therefore, the only conclusion under this circumstance can be drawn that the paper exhibit Ka-4 was written by Ram Singh as alleged by him on the dictation of Ratan Singh who signed the exhibit ka-4 and there remains no doubt that on 04.10.1979 at about 9:10 A.M. at the alleged place of occurrence, some Marpeet took place as the prosecution witness of the fact have proved it beyond reasonable doubt that while they were cutting grass, the aforesaid nineteen accused persons came and attacked them and in that occurrence, Tula Ram and Rati Ram died as Hans Ram, Mohar Singh, Maya Ram and Beer Singh had sustained injuries on their person. It is also important to mention here that no explanation has put forwarded by the accused as to how Tula Ram and Rati Ram died and four other persons sustained injuries at the place of the occurrence. It is, therefore, concluded that this exhibit ka-4 was got prepared by Ratan Singh simply for creating an evidence in the defence of the accused/appellant because the accused persons knew that in the occurrence as alleged by the prosecution, two persons have died and four persons have sustained injuries on their person from the complainant side.

36- As far as the injuries sustained by Shiv Ram from the side of this accused is concerned, it would be relevant to mention here that Dr. S.K. Sharma, P.W.8 has examined his injuries on 06.10.1979 at 10:00 A.M. and found four injuries on his person. According to the deposition of this doctor, the injuries could have been caused on 04.10.1979 at about 9 or 10 A.M. He has also opined that the injuries could have been caused by Daratti and stones. Dr. Sharma in his cross-

examination has deposed that the injuries could be caused due to fall and injury could be caused if somebody falls on a pointed stone. He has also deposed that these injuries could have been caused on 04.10.1979 at about 3 or 4 A.M. on 04.10.1979. The accused Shiv Ram in his statement under Section 313 Cr.P.C. has stated that he received these injuries in the night due to fall, but no explanation has come forward from the side of the accused as to what he was doing in the night as well as no explanation has been given that as to which place, he sustained these injuries. Hence, it cannot be said that the injuries on the person of Shiv Ram could not have been caused at the time of the alleged occurrence. Therefore, the injuries sustained by Shiv Ram again strengthens the case of the prosecution. There is no doubt about the presence of the accused/appellant at the place and at the alleged time of the occurrence.

37- The occular version produced by the prosecution again finds corroboration with the medical version. Dr. A.K. Verma, P.W.5 has conducted the post-mortem on the body of the deceased Tula Ram and Rati Ram. Dr. Verma has opined in his deposition before the Court that death of Tula Ram and Rati Ram was possible on 04.10.1971 at about 9 or 10 A.M. and the injuries on their person were sufficient for death.

38- Much emphasis has been stressed on this aspect by the learned counsel for the appellant that Dr. Verma in his cross-examination has deposed that there may be a difference of one day between the death of Rati Ram and Tula Ram because the skin of Tula Ram at the time of postmortem was greenish brown then that of Rati Ram was greenish and this situation creates a serious doubt about the prosecution case and the

manner of the occurrence as has been alleged by the prosecution.

39- We again do not find any force in this argument. Dr. Verma P.W.5 has simply given the possibility and has not specifically deposed that there was a difference of one day between the death of Tula Ram and Rati Ram. We do not find any doubt on this point that there is a contradiction between the occular and the medical version. The occurrence took place on 04.10.1979 at Sodidhar which is a hilly area of Tehsil Chakrata. The month during which the occurrence took place is a winter season and it is quite chilly in those hills. Therefore, there may be difference in the colour of skin due to the body built of two deceased persons and on account of the nature of injuries sustained by the deceased. As per the postmortem report, the body of the Tula Ram was well built while the body of Rati Ram was of ordinary built. Tula Ram died on account of gun shot injuries while Rati Ram died on account of Lathi blows. Therefore, as per the doctor version, these two persons could have died on 04.10.1979 at about 9 or 10 A.M. finds full support by the statement of eyewitnesses as well as exhibit ka-4, which is a written report from the side of the accused.

40- Apart of the aforesaid evidence, the statement of Dr. P.K. Jaiswal, P.W.9 incase if is taken into consideration, then it appears that he has examined the injuries of Hans Ram, Mohar Singh, Maya Ram and Beer Singh on 05.10.1979 in the morning hours and this witness in his deposition has clearly deposed that the injuries on the person of these four injured could have been caused on 04.10.1979 at about 9 or 10 A.M. Nothing material could be elicited during his cross-examination which may suggest that the

injuries on the bodies of the injured person could not be caused at the alleged time of the occurrence. Therefore, we have come to the definite conclusion that the accused/appellant committed Marpeet on 04.10.1979 at the alleged place and time of the occurrence suggested by the prosecution and during this Marpeet, two persons Tula Ram and Rati Ram lost their lives and four persons sustained injuries.

41- The occular version produced by the prosecution finds full support with the medical evidence available on the record and we do not find any reason to discard or disbelieve the prosecution case, which has been established beyond reasonable doubt.

42- In view of the assessment of evidence made by us in the foregoing paragraphs, we reach to the conclusion that the Trial Court has rightly convicted and sentenced thereon the accused/appellant.

43- We do not find any ground for interference in the impugned judgment and the order passed by the Trial Court.

44- The appeal thus fails and is accordingly dismissed.

45- A copy of the judgment alongwith the Trial Court record should be sent immediately so that the Chief Judicial Magistrate concerned may take appropriate action in order to take the appellant into custody.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

December 18, 2004:
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